

BEFORE THE TENNESSEE REGULATORY AUTHORITY  
AT NASHVILLE, TENNESSEE

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REGULATORY AUTH  
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OFFICE OF THE  
EXECUTIVE SECRET

CONSUMER ADVOCATE DIVISION )

vs. )

BELLSOUTH TELECOMMUNICATIONS, )  
INC. )

Docket No. \_\_\_\_\_

Tariff 99-00574

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COMPLAINT, OR ALTERNATIVELY, PETITION TO INTERVENE AND PETITION OF  
INJUNCTIVE RELIEF

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Complainant and Petitioner, Consumer Advocate Division of the Office of the Attorney  
General respectfully seeks an evidentiary hearing and injunctive relief and would respectfully  
show:

I

1. That the complainant, Consumer Advocate Division of the Office of the Attorney  
General ("CAD"), 425 5th Avenue North, 2nd Floor Cordell Hull Building, Nashville, Tennessee,  
37243, represents the interest of Tennessee consumers pursuant to Tenn. Code Ann. §§ 65-4-118  
and 65-5-210 (b).

2. That defendant, BellSouth Telecommunications, Inc. (BellSouth), 333 Commerce  
Street, Suite 2101, Nashville, Tennessee 37201-3300 is a publicly held utility and is subject to the  
jurisdiction of the Tennessee Regulatory Authority ("Authority") pursuant to Tenn. Code Ann. § 65-  
4-101. Counsel for BellSouth is Guy Hicks, Esq.

II

3. That on or about June 20, 1995 BellSouth applied for a price regulation plan in  
accordance with Tenn. Code Ann. § 65-5-209.

**FILE**

4. That Tenn. Code Ann. § 65-5-208 (a) provides in pertinent part:

65-5-208. Classification of services - Exempt services - Price floor - Maximum rates for non-basic services.

(a) Services of incumbent local exchange telephone companies **who apply** for price regulation under § 65-5-209 are classified as follows:

(1) "Basic local exchange telephone services" are telecommunications services which are comprised of an access line, dial tone, touch-tone and usage provided to the premises for the provision of two-way switched voice or data transmission over voice grade facilities of residential customers or business customers within a local calling area, Lifeline, Link-Up Tennessee, 911 Emergency Services and educational discounts existing on June 6, 1995, or other services required by state or federal statute. These services shall, at a minimum, be provided at the same level of quality as is being provided on June 6, 1995. **Rates for these services shall include both recurring and nonrecurring charges.**

5. That BellSouth's basic local exchange rates in effect on June 6, 1995 incorporated working capital and lead lag rate adjustments to compensate the company for recurring and non-recurring late payments and uncollectible as stated in the attached affidavit of Robert T. Buckner.

6. That rates do not exist in isolation. They have meaning only when one knows the services to which they are attached. AT&T v. Central Office Telephone, 524 U.S. 214, 118 S.Ct. 1956, 1998, 141 L.Ed2d 222 (1998).

7. That the rates for basic local exchange services were attached to the recurring and nonrecurring charges for basic local exchange service on June 6, 1995 and further that those rates attached to and included compensation for late payments.

8. That the TRA on December 9, 1998 entered an order creating a retroactive effective date for BellSouth of October 1, 1995 and an initial rates date of December 1, 1998 based on BellSouth's rates in effect on June 6, 1995. (That the Consumer Advocate Division has appealed

the decision and does not waive any arguments in making its allegations herein.)

9. That the TRA and BellSouth claim that BellSouth's initial rates under Tenn. Code Ann. § 65-5-209 began on December 1, 1998.

10. That if BellSouth's initial rates began on December 1, 1998, the TRA does not have jurisdiction to increase any Tenn. Code Ann. § local basic exchange service rates which could be included under Tenn. Code Ann. § 65-5-208 (a) (1) and that BellSouth does not have authority to increase said rates because Tenn. Code Ann. § 65-5-209(f) effectively freezes said rates for four years. Tenn. Code Ann. § 65-5-209 (f) provides:

Notwithstanding the annual adjustments permitted in subsection (e), the initial basic local exchange telephone service rates of an incumbent local exchange telephone company subject to price regulation shall not increase for a period of four (4) years from the date the incumbent local exchange telephone company becomes subject to such regulation. At the expiration of the four-year period, an incumbent local exchange telephone company is permitted to adjust annually its rates for basic local exchange telephone services in accordance with the method set forth in subsection (e) provided that in no event shall the rate for residential basic local exchange telephone service be increased in any one (1) year by more than the percentage change in inflation for the United States using the gross domestic product-price index (GDP-PI) from the preceding year as the measure of inflation.

11. That BellSouth, on August 6, 1999, filed tariff number 99-00574 and seeks an effective date of September 7, 1999 which seeks to add additional recurring or non recurring late payment charges to the compensation it is already receiving for said late payments in effect on June 6, 1995 and on December 1, 1998 and that said tariff is unlawful.

12. That BellSouth, on August 6, 1999, filed tariff number 99-00574 seeks an effective date of September 7, 1999 which seeks to add additional recurring or non recurring late payment

charges to the compensation for said late payments in effect on June 6, 1995 and on December 1, 1998 and that said tariff is neither just or reasonable.

13. That BellSouth, on August 6, 1999, filed tariff number 99-00574 seeks an effective date of September 7, 1999 which seeks to add additional recurring or non recurring late payment charges to the compensation for said late payments in effect on June 6, 1995 and on December 1, 1998 and that said tariff is unjustly discriminatory because it does not apply to state agencies but does apply to all other government agencies, including but not limited to the federal and municipal governments and that no showing is made that the late payment costs between the favored and not favored consumers are different.

14. That cases hold:

Any claim for excessive **rates** can be couched as a claim for inadequate services and vice versa. "If '**discrimination** in charges' does not include non-price features, then the carrier could defeat the broad purpose of the statute by the simple expedient of providing an additional benefit at no additional charge.... An unreasonable '**discrimination** in charges,' that is, can come in the form of a lower price for an equivalent service or in the form of an enhanced service for an equivalent price." AT&T v. Central Office Telephone, supra, citing Competitive Telecommunications Assn. v. FCC, 998 F.2d 1058, 1062 (C.A.D.C.1993).

15. That 'discrimination in charges' includes non-price features, and that BellSouth can not defeat the broad purpose of Tenn. Code Ann. § 65-4-122 by the simple expedient of providing or withholding a benefit.

16. That discriminatory "privileges" come in many guises, and are not limited to discounted rates and that a preference or rebate is the necessary result of every violation where BellSouth renders, or pays, for a service for one customer but not another.

17. That not paying a late charge, if BellSouth can implement additional late charges, is a privilege covered and prohibited by Tenn. Code Ann. § 65-4-122 and Tenn. Code Ann. § 65-4-122 (c).

18. That the late charge proposed in the tariff is more than just and reasonable and is both a penalty prohibited by Tenn. Code Ann. § 65-4-122 (b) and a double payment to BellSouth of the premium included in the basis local exchange rates for late charges.

19. That the late charge is unreasonable and even if not unreasonable still discriminatory.

20. That BellSouth should be estopped from alleging that working capital and lead/lag was considered in its current local basic exchange service rates to cover the lag between the provision of service and the collection of revenues.

21. That BellSouth should be estopped from alleging that working capital and lead/lag was considered in its current local basic exchange service rates to cover the lag between the provision of service and the collection of revenues and that rates were calculated to compensate the company for late payments and bad debts.

22. That BellSouth should be estopped from alleging that the rates for local basic exchange service are not related to services covered by those rates.

23. That BellSouth has failed to show the amount and source of any alleged subsidy to local basic exchange service from other rates and further that BellSouth has not shown that it has adequately reduced rates to compensate for the price increase.

24. That local basic exchange service rates contain a recurring charge for late payments and bad debt and tariff 99-00574 is an increase in the recurring charge.

25. That consumers and localities are irreparably harmed by the unjust discrimination,

the penalty and the more than just and reasonable rates proposed in tariff 99-00574.

26. That Tenn. Code Ann. § 65-4-122 provides:

(a) If any common carrier or public service company, directly or indirectly, by any special rate, rebate, drawback, or other device, charges, demands, collects, or receives from any person a greater or less compensation for any service within this state than it charges, demands, collects, or receives from any other person for service of a like kind under substantially like circumstances and conditions, and if such common carrier or such other public service company makes any preference between the parties aforementioned such common carrier or other public service company commits unjust discrimination, which is prohibited and declared unlawful.

\* \* \*

(c) It is unlawful for any such corporation to make or give an undue or unreasonable preference or advantage to any particular person or locality, or any particular description of traffic or service, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic or service to any undue or unreasonable prejudice or disadvantage.

*See also*, Tenn. Code Ann. §§ 65-4-122 and 65-5-204.

27. That Tenn. Code Ann. § § 65-4-122 and 65-5-204 provide rules of construction for the determination of unlawful discrimination under Title 65.

28. That price discrimination is the practice of selling the same product at two or more prices where the price differences do not reflect cost differences.

29. That price discrimination is the practice of selling the same product at two or more prices where the price differences do not reflect cost differences and that BellSouth engages in price discrimination with respect to its special contracts and further that persons who are not charged the lower discounted or rated rates are unduly and unjustly discriminated against.

30. That BellSouth tariff 99-00574 makes service price differences with respect to local basic exchange services and other services under its tariff.

31. That BellSouth tariff 99-00574 makes price differences which are not based not on cost differences.

32. That BellSouth tariff 99-00574 is contrary to public policy.

33. That approving BellSouth tariff 99-00574 would be contrary to this agency's duty to protect consumers as provided by Tenn. Code Ann. § 65-4-123 which provides in pertinent part:

Declaration of telecommunications services policy.

The general assembly declares that the policy of this state is to foster the development of an efficient, technologically advanced, statewide system of telecommunications services by permitting competition in all telecommunications services markets, and by permitting alternative forms of regulation for telecommunications services and telecommunications services providers. To that end, **the regulation of telecommunications services and telecommunications services providers shall protect the interests of consumers** without unreasonable prejudice or disadvantage to any telecommunications services provider; universal service shall be maintained; and rates charged to residential customers for essential telecommunications services shall remain affordable.

34. That the TRA should find that the proceeding involving tariff 99-00574 is a contested case proceeding within the definition provided by Tenn. Code Ann. § 65-2-101 (2).

35. That Tenn. Code Ann. § 65-3-105 empowers the TRA to enjoin the BellSouth tariff and said tariff should be enjoined.

Wherefore the Consumer Advocate Division prays that the Tennessee Regulatory Authority find that the proceeding involving tariff 99-00574 is a contested case proceeding within the definition provided by Tenn. Code Ann. § 65-2-101 (2).

The Consumer Advocate Division further prays that the Tennessee Regulatory Authority find that price discrimination is the practice of selling the same product at two or more prices where the price differences do not reflect cost differences and that tariff 99-00574 unjustly discriminates and

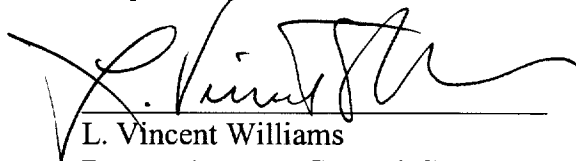
that consumers who must pay the late charge while others do not are discriminated against.

The Consumer Advocate Division further prays that the Tennessee Regulatory Authority find that provision for late payments and bad debts were considered and included in BellSouth's basic local exchange service rates on June 6, 1995 and December 1, 1998.

The Consumer Advocate Division further prays that the Tennessee Regulatory Authority find that tariff 99-00574 is contrary to public policy, creates privileges and rates which are prohibited by Tenn. Code Ann. §§ 65-4-122 (a)(b)(c).

The Consumer Advocate Division further prays that the Tennessee Regulatory Authority enjoin tariff 99-00574, find that it is not cost justified and grant other relief as is just.

Respectfully Submitted,

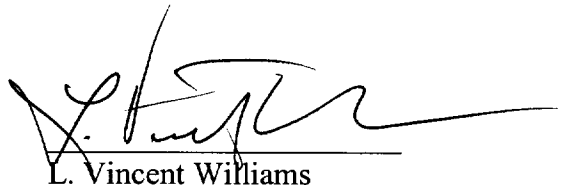


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Consumer Advocate Division  
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B.P.R. No. 011189

Certificate of Service

I hereby certify that a true and correct copy of the foregoing Document has been mailed postage prepaid to the parties listed below this 31<sup>st</sup> day of August, 1999.

Guy Hicks, Esq.  
BellSouth Communications, Inc.  
333 Commerce St., Suite 2101  
Nashville, TN 37201-3300



L. Vincent Williams



IN THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE

IN RE: PETITION OF BELL SOUTH TO )  
IMPLEMENT NEW AND INCREASE )  
EXISTING LATE PAYMENT ) DOCKET NO. 99-00574  
CHARGES )  
)

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AFFIDAVIT

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Comes the Affiant, R. Terry Buckner, after being duly sworn who deposes and says:

1. That I am a Certified Public Accountant and Senior Regulatory Analyst of the Consumer Advocate Division Staff ("CA") in the office of the Attorney General and Reporter for the State of Tennessee.
2. That the BellSouth rate filing does not address the fact that the customer or end-user has already considered the timeliness of payments and their related bad debt expense in BellSouth's current rates.
3. That at the last rate proceeding for BellSouth before the Tennessee Public Service Commission ("TPSC"), return on the investment in Working Capital required to fund the operations during the lag between provision of service and collection of revenues was included in the cost of service on which current rates are based.
4. That at the last rate proceeding for BellSouth before the TPSC, the cost of service on which current rates are based included bad debt expense reflecting BellSouth's actual collection experience and that those rates were in existence on June 6, 1995 and December 1, 1998.
5. That the imposition of a late payment charge without a corresponding reduction will result in BellSouth's double recovering of costs. BellSouth will recover once through rates and again through the application of the penalty.

Further the Affiant sayeth not.

R. Terry Buckner  
R. Terry Buckner

Subscribed and sworn before me this the 31<sup>st</sup> day of August, 19 99.

Nancy L. Roseman  
Notary Public

My commission expires on the 29 day of January, 19 2000.